

N. WARNER LEE, THE ATTORNEY GENERAL
STATE CAPITOL
PHOENIX, ARIZONA

November 18, 1974

DEPARTMENT OF LAW OPINION NO. 75-1 (R-1)

REQUESTED BY: THE HONORABLE PETER KAY
Arizona State Representative

QUESTION: In Arizona may non-attorney Justices of the Peace preside over offenses punishable by a jail sentence if the accused or his attorney do not waive the right to have an attorney judge preside?


ANSWER: Yes.

The Supreme Court of Arizona has specifically addressed the constitutionality of having non-members of any state bar, or non-attorneys, act as Justices of the Peace. State v. Lynch, 107 Ariz. 463, 464, 489 P.2d 796, 698 (1971); see Crouch v. Justice of Peace Court of Sixth Precinct, 7 Ariz. App. 460, 465, 466, 440 P.2d 1000, 1005-1006 (1968), cited with approval in State v. Lynch, supra; State v. Dziggel, 16 Ariz.App. 289, 291, 492 P.2d 1227, 1229 (1972). See generally Nicol v. Superior Court, Maricopa County, 106 Ariz. 208, 209, 473 P.2d 455, 456 (1970).

These cases have uniformly held that it is constitutionally permissible for non-attorneys to act as Justices of the Peace. We take note of the recent California case of Gordon v. Justice Court for Yuma Judicial District of Sutter County, 115 Cal.Rptr. 632, 525 P.2d 74 (1974), which reaches the opposite result; however, absent any binding decision of the Supreme Court of the United States on this issue, the decision of the Arizona Supreme Court is the law in Arizona. The Arizona cases considered Arizona constitutional and statutory requirements as well as the due process requirements of the federal Constitution which were relied on by the Supreme Court of California, and it should be noted that the same arguments raised in the California case were considered and rejected in the Arizona cases.

Therefore, it is the opinion of this office that in Arizona non-attorney Justices of the Peace may preside over offenses punishable by a jail sentence.

Respectfully submitted,


N. WARNER LEE
The Attorney General

NWL:GMC:lf